

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

GILBERT L. SPURLOCK,

Plaintiff,

v.

**Civil Action No. 3:09-0035
(Lead Case)**

Appeal No. 09-228

**COLONEL DANA R. HURST and
U.S. ARMY CORPS OF ENGINEERS,**

Defendant.

MEMORANDUM OPINION AND ORDER

On October 29, 2009, I issued a Memorandum Opinion and Order and Statement of Reasons finding and certifying that plaintiff's appeals are a product of a continuing, bad-faith intention to further prolong his vexatious litigation practices and accordingly, denied him leave to appeal *in forma pauperis* ["IFP"]. Plaintiff subsequently completed another IFP motion on November 9, 2009, and filed it directly with the United States Court of Appeals for the Fourth Circuit on November 13, 2009 [Docket 177]. The Court of Appeals forwarded the IFP application to this court for ruling pursuant to Rule 24 of the Federal Rules of Appellate Procedure and requested notice of disposition of the motion.


Although the October 29, 2009, denial order is sufficient in and of itself to deny this subsequent IFP application, the court chooses to take notice of additional reasons for denial brought to its attention in memoranda filed by the government in response to plaintiff's most recent IFP application. The government contends plaintiff has repeatedly misrepresented and

under-reported his income in IFP motions. It appears from documents supplied by the government that plaintiff has failed to disclose nearly \$5,000 in monthly income made up of veterans benefits and a disability retirement. Past uncontested affidavits of indigence have allowed plaintiff to avoid payment of significant filing fees in this court and other state and federal courts. If totaled these fees would run well into thousands of dollars. Assuming the accuracy of the government's representations, plaintiff has apparently subverted the goals of a statutory process designed to open the doors of the courts to those whose indigence would otherwise leave their grievances unresolved.

In light of my October 29, 2009, ruling on this matter, the court **DENIES** plaintiff's Motion and Affidavit for Permission to Appeal In Forma Pauperis.¹

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Mary E. Stanley, the Clerk of the United States Court of Appeals for the Fourth Circuit, counsel of record, and any unrepresented party.

ENTER: December 4, 2009



Joseph R. Goodwin, Chief Judge

¹The government seeks additional findings and certifications that the appeal is malicious, fails to state a claim upon which relief may be granted, seeks monetary relief against a defendant immune from such relief, and that the allegation of poverty is untrue. The court need not pass on these matters at this time.